

Bakeries

How Do Wisconsin Sales and Use Taxes Affect Your Operations?

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IMPORTANT CHANGE

Exemption certificates. A new exemption certificate, Wisconsin Sales and Use Tax Exemption Certificate (Form S-211), replaced Wisconsin Resale Certificate (Form S-205), Certificate of Exemption (Form S-207), and Manufacturer's Sales and Use Tax Exemption Certificate (Form S-207m). However, purchasers may use, and retailers may accept, Form S-205, S-207, and S-207m. Various pages.

Exempt Sales. For clarification, additional examples of exempt sales are added to page 2.

Football Stadium Tax. A football stadium district sales and use tax became effective November 1, 2000. Page 1.

I. INTRODUCTION

This publication explains how Wisconsin state sales and use taxes affect bakeries. It also provides examples of taxable and nontaxable sales and purchases.

Note: Certain sales and purchases by bakeries which are subject to the 5% state sales and use tax may also be subject to the: (a) 0.5% county sales or use tax; (b) 0.1% baseball stadium sales or use tax; (c) 0.5% football stadium tax; (d) local exposition taxes; and (e) 0.5% premier resort area tax. Additional information about these taxes is contained in the following:

- (a) County tax: Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII.
- (b) Baseball stadium tax: Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII. Applies to sales and purchases made in Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties.
- (c) Football stadium tax: Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII. Applies to sales and purchases made in Brown County.
- (d) Local exposition taxes: Publication 410, *Local Exposition Taxes*. These taxes apply to sales and purchases of certain lodging, food and beverages, and car rentals in municipalities wholly or partially within Milwaukee County.

- (e) Premier resort area tax: Publication 403, *Premier Resort Area Tax*. This tax applies to the sales of tangible personal property and taxable services made by certain retailers engaged in business in a premier resort area.

Publications 201, 410, and 403 are available from any Department of Revenue office.

CAUTION

- The information in this publication reflects interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of January 1, 2003. Laws enacted after that date, administrative rules, and court decisions may change the interpretations in this publication.
- The lists and examples provided in this publication are not all-inclusive. They merely set forth common examples.

II. SALES BY BAKERIES

Sales of Bakery Goods: The taxability of bread, cakes, cookies, doughnuts, rolls, and other foods commonly sold by bakeries depends on whether the items are (1) "heated" and (2) sold for consumption on the bakery's premises. See Table 1 below.

Table 1

	Eaten on Premises of Bakery	Not Eaten on Premises of Bakery
Heated Bakery Goods	Taxable	Taxable
Unheated Bakery Goods	Taxable	Not Taxable

"Heated bakery goods," as used in Table 1 above, means those foods which have been intentionally prepared for sale in a heated condition and which are sold at a temperature higher than the air temperature of the room or place where they are sold.

"On premises," as used in Table 1, includes any area within the bakery, any other area set up by the bakery

for consumption of the food and beverages being sold to customers, and the parking lot.

Example 1 - Doughnuts “To Go”: Bakery A sells one dozen doughnuts to Customer B. Customer B does not eat the doughnuts on Bakery A’s premises. The sale is not subject to Wisconsin sales tax.

Example 2 - Doughnuts and Coffee “To Go”: Bakery A sells one dozen doughnuts and 4 cups of coffee to Customer B. Customer B does not eat the doughnuts or drink the coffee on Bakery A’s premises. The sale of the doughnuts is not subject to Wisconsin sales tax. The sale of the coffee is subject to Wisconsin sales tax because the coffee is a “heated” beverage.

Example 3 - Doughnuts and Coffee Eaten at Bakery: Bakery C sells 2 doughnuts and a cup of coffee to Customer D. Customer D eats the doughnuts and drinks the coffee at Bakery C. The sale of the doughnuts and coffee is subject to Wisconsin sales tax because the doughnuts and coffee are consumed on Bakery C’s premises.

Note: The sale of the coffee is subject to sales tax regardless of whether it is consumed on or off Bakery C’s premises because the coffee is a “heated” beverage.

Sales of Other Items: Sales of other foods, food products, and beverages by a bakery which are eaten on the bakery’s premises are also subject to Wisconsin sales tax. This is true whether or not the items are sold in a heated condition.

Sales of meals and sandwiches (whether heated or not), heated foods and beverages, soda fountain items such as sundaes, milk shakes, malts, ice cream cones and sodas, candy, chewing gum, lozenges, popcorn, and confections, whether eaten on or off the bakery’s premises, are also subject to Wisconsin sales tax.

In addition to the items listed above, a bakery’s sales of any other items of taxable tangible personal property, such as non-edible cake decorations, are also subject to Wisconsin sales and use tax.

Exempt sales include sales of the following items, if sold for consumption off the bakery’s premises:

- Milk
- Pure fruit juices
- Iced coffee
- Iced tea

Sales of Business Assets: Sales of business assets that are tangible personal property (for example, equipment, furniture, and fixtures) are subject to Wisconsin sales tax if the bakery holds or is required to hold a seller’s permit at the time of sale. However, sales of business assets are not subject to Wisconsin sales and use tax if both of the following conditions are met:

1. The sale is of tangible personal property (other than inventory held for sale) which was previously used by the seller to conduct a trade or business at a particular location.
2. The sale occurs after the seller ceases operating the business at **that** location.

A sale meeting the above two conditions is not subject to Wisconsin sales and use tax, even though the seller holds a seller’s permit for one or more other locations at the time of the sale.

Example - Sale of Assets by a Business Which Has Ceased to Operate: Bakery C ceases actively operating as a seller of tangible personal property and taxable services on August 1, 2002. Bakery C sells its business assets (other than inventory) on September 1, 2002. Since the items Bakery C is selling are tangible personal property previously used in its business and Bakery C has ceased operating at that location prior to the sale of its assets, the sale of the business assets is exempt from Wisconsin sales tax as an occasional sale.

Example - Sale of Assets by a Continuing Business: Bakery D holds a Wisconsin seller’s permit and sells used shelving to Customer E for \$1,000. Since Bakery D holds a seller’s permit at the time of the sale and is continuing to operate at the location where the shelving was located, the \$1,000 sale is subject to Wisconsin sales tax.

III. PURCHASES BY BAKERIES

Food and Food Products (Ingredients): Purchases of ingredients used to produce baked goods which will be sold may be purchased without paying Wisconsin sales and use tax. If the ingredients qualify for the exemption

for food, food products, and beverages for human consumption, the bakery does not need to provide the supplier with an exemption certificate. If the ingredients do not qualify for the exemption for food, food products, and beverages for human consumption, the bakery must provide the supplier with a properly completed exemption certificate (Form S-211) to purchase them without Wisconsin sales and use tax.

Example 1 - Purchases of Food and Food Products (Ingredients) for Manufactured Items - No Exemption Certificate Needed: Bakery D purchases flour and eggs which will be used to make cakes. Since flour and eggs are exempt food or food products for human consumption, Bakery D may purchase the flour and eggs without Wisconsin sales and use tax. Bakery D is not required to provide the supplier of the flour and eggs with an exemption certificate.

Example 2 - Purchases of Food and Food Products (Ingredients) for Manufactured Items - Exemption Certificate Is Needed: Bakery E purchases candy which will be used to make cakes. Since candy is not an exempt food or food product for human consumption, Bakery E may only purchase these items without Wisconsin sales and use tax if Bakery E provides the supplier of the candy with a properly completed exemption certificate.

Other Items Being Resold: If the item being purchased does not qualify as a food, food product, or beverage for human consumption (e.g. non-edible cake decorations), but is being resold by the bakery, the bakery must provide the supplier with a properly completed exemption certificate claiming resale to purchase the item without Wisconsin sales and use tax.

Example - Purchases of Cake Decorations for Resale: Bakery F purchases non-edible cake decorations from Supplier G which will be resold to Bakery F's customer along with a cake. Bakery F must provide Supplier G with a properly completed exemption certificate claiming resale to purchase the decorations without Wisconsin sales and use tax.

In addition, a bakery may also purchase disposable paper and plastic eating utensils, napkins, straws, and placemats without tax for resale if these items are transferred to customers in conjunction with providing

meals, food, food products, and beverages to its customers.

Items Not Being Resold: If a bakery purchases reusable items which are not being resold to and kept by customers, but instead are kept by the bakery or returned to the bakery and reused, the bakery is considered to be the consumer of these types of items. Purchases by the bakery of these types of items are subject to Wisconsin sales or use tax.

Example - Purchases of Reusable Cake Decorations: Bakery H purchases reusable cake decorations from Supplier I. Bakery H's customers are required to return the decorations to Bakery H after the cake is eaten. Bakery H does not charge its customers for use of the decorations. Bakery H is considered to be the consumer of the reusable decorations and must pay Wisconsin sales or use tax on its purchases of the decorations.

Machinery and Equipment: Bakeries are considered to be manufacturers for Wisconsin sales and use tax purposes and, therefore, they may purchase certain machinery and equipment without Wisconsin sales and use tax. The machinery and equipment must be used **exclusively and directly** in the manufacturing process to qualify for the exemption from Wisconsin sales and use tax. For such exempt items, the bakery should provide the supplier with a properly completed exemption certificate (Form S-211).

Note: "Exclusively," as it relates to machinery and equipment used in the manufacturing process, means that the machinery and equipment is used solely by a manufacturer in the manufacturing process to the exclusion of all other uses, except that the sales and use tax exemption will not be invalidated by an infrequent and sporadic use other than in manufacturing.

Example - Purchases of Equipment Used in Manufacturing Process: Bakery A purchases a mixer which will be used exclusively and directly in the manufacturing of doughnuts. Bakery A must provide the supplier with a properly completed sales and use tax exemption certificate (Form S-211) to purchase the mixer without Wisconsin sales and use tax.

The manufacturing process of a bakery begins with the removal of the ingredients from storage and ends when

the finished product reaches the point of first storage. The point of first storage for a bakery will generally be the location at which the baked goods are stored until they are sold to customers. However, the manufacturing process also includes the packaging of the baked goods in bags, boxes, etc., if the baked goods have not been stored or displayed prior to packaging them.

Example 1 - Packaging Not Part of Manufacturing Process: Bakery A manufactures doughnuts. Once the doughnuts are manufactured, they are placed in a display case where customers choose which doughnuts they would like to purchase. As the doughnuts are selected, they are placed in a box. The packaging of the doughnuts, as described above, is not part of the manufacturing process because the doughnuts were displayed prior to packaging them. As a result, the machinery and equipment used to package the doughnuts does not qualify for the manufacturing exemption. However, the packaging materials themselves (for example, boxes, bags) are exempt from Wisconsin sales and use tax as containers used to transfer merchandise to customers.

Example 2 - Packaging Part of Manufacturing Process: Bakery B manufactures bread. Once the bread is removed from the ovens, it is placed on trays to cool. After the bread is cooled, equipment packages the bread in bags. The equipment is used exclusively to package the bread prior to being stored or displayed for sale. The packaged bread is then displayed for sale to customers. The packaging equipment, if used as described above, qualifies for the exemption for machinery and equipment used exclusively and directly in the manufacturing process.

Items Which Qualify for Exemption: Examples of items which may be purchased by a bakery without Wisconsin sales and use tax **if used exclusively and directly in manufacturing** include (this list is not all-inclusive):

- Bread pans, pie pans, and other pans for baking
- Bread slicers, cookie cutters, and glazing screens
- Scales used to weigh dough
- Rolling pins, scoops, measures, and can openers
- Ovens, mixers, gas fryers, and doughnut machines

- Thermometers used to check the temperature of dough
- Wearing apparel used by employees to prevent contamination of the manufactured product (for example, gloves worn by an employee making doughnuts which are worn to prevent the doughnuts from being contaminated during the manufacturing process qualify for this exemption)
- Parts and repairs for machinery and equipment used exclusively and directly in manufacturing
- Cleaners and solvents used for cleaning manufacturing machinery
- Shelves and racks used to temporarily store baked goods that are not completely manufactured

(Note: If any of the previously listed items are not used exclusively and directly in the manufacturing process, they do not qualify for the exemption and are subject to Wisconsin sales or use tax at the time they are purchased.)

Items Which Do Not Qualify for Exemption: Examples of machinery, equipment, and other business assets which are not considered to be used directly in the manufacturing process and are subject to Wisconsin sales or use tax include (this list is not all-inclusive):

- Pot and pan washers and sinks
- Display equipment, including display pans
- Delivery carts and reusable racks used in delivering bakery products
- Wearing apparel for the comfort or welfare of employees or for the protection of employees' clothing (for example, an apron worn by an employee to prevent the employee's clothing from being damaged does not qualify for this exemption)
- Cleaning equipment such as brooms, mops, and vacuums
- Refrigerated display cases, condensing units, and shelving systems
- Check-out counters, cash registers, and computer scanning systems
- Moveable display racks used to store raw materials or finished bakery
- Office furniture

- Walk-in cold storage units that are not a component part of a building

Example: Bakery A purchases a rack which will be used to display various products offered for sale. The purchase of the rack by Bakery A is subject to Wisconsin sales or use tax.

Containers and Packaging Materials: A bakery's purchases of containers and other packaging materials which are physically transferred to customers, along with the merchandise the customer is purchasing, are not subject to Wisconsin sales and use tax. The containers may or may not be returnable. To claim this exemption, the bakery must provide the supplier with a properly completed exemption certificate (Form S-211).

Examples of items which qualify for this exemption include:

- Boxes or cartons used to package doughnuts
- Bags used to package bread
- Dividers used to separate food within containers
- Paper used to line containers
- Tape and rubber bands used to keep containers closed
- Cups used to transfer beverages to customers

Examples of items which **do not qualify** for the exemption for containers and packaging and shipping materials include:

- Wrapping equipment such as tape dispensers, paper holders, and staplers (assuming these items are not used directly and exclusively in the manufacturing process)
- Price tags
- Containers or other packaging and shipping materials used to transfer merchandise owned by a person from one location to another.

Supplies: A bakery's purchases of supplies are subject to Wisconsin sales and use tax. Examples of supplies which a bakery may purchase and use in its business and which are subject to Wisconsin sales and use tax include:

- Office and store supplies used by the bakery, including pens, pencils, paper, and cash register tapes
- Employee uniforms, including smocks, aprons, hair nets, and name tags
- Training materials, including tapes and manuals
- Cleaning supplies, such as brooms/mops and chemicals
- Advertising and display racks and signs
- Repairs to taxable equipment and other tangible personal property

Note: (1) Purchases of the above supplies are not subject to Wisconsin sales and use tax if the supplies: (a) are consumed or destroyed, or lose their identity in the manufacturing process; or (b) prevent the contamination of the product while being manufactured.

(2) Purchases of fuel and electricity are taxable, even if they are consumed, destroyed, or lose their identity in a bakery's manufacturing process. Manufacturers; however, are permitted to offset franchise or income taxes payable with sales tax paid on certain purchases of fuel and electricity. For additional information, see Publication 203, *Sales and Use Tax Information for Manufacturers*, Parts IV.E. and VI.

If the bakery does not pay Wisconsin sales or use tax to the supplier at the time the supplies are purchased (other than those supplies which are exempt as previously explained), the bakery is liable for Wisconsin sales or use tax on such purchases.

IV. ANY QUESTIONS?

If you have questions about sales and use taxes, call or visit any Department of Revenue office or contact the department by any of the following:

Write . . . Wisconsin Department of Revenue
P.O. Box 8902
Madison, WI 53708-8902

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